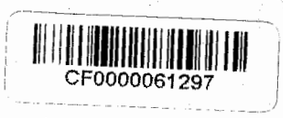
(2)



Division Bench (Jabalpur)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR

Criminal Appeal No. 1807 /1997

APPELLANT (Accused in Jail) - Lala Ram son of Shri Pavan Kumar Kevat, aged 23 years, resident of Darang, P.S. Chanpa, District Bilaspur (M.P.)

V/s

N917 RESPONDENT - State of Madhya Pradesh Through Police Station, Chanpa Teh. Janjgir, Distt. Bilapur (MP).

Filed on 30857 by Shri GP Sonyi Advocate

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE.

(17)

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 1807 of 1997

Lala Ram

Versus

State of Madhya Pradesh

JUDGEMENT FOR CONSIDERATION

Sd/-
JUDGE
19/04/2006

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C. Bhadoo
Judge

POST FOR JUDGMENT ON 21 - 4 - 2006

Sd/-
Dhirendra Mishra
Judge

(18)

DIVISION BENCH: HON'BLE SHRI L.C. BHADOO & HON'BLE SHRI DHIRENDRA MISHRA, JJ

CRIMINAL APPEAL NO. 1807 of 1997

Appellant : Lala Ram

Vs.

Respondent : State of Madhya Pradesh

Shri Sachin Singh Rajput, learned counsel for the appellant.

Shri U.N.S. Deo learned Additional Public Prosecutor for the respondent/State.

JUDGMENT
(Delivered on 21.04.2006)

Per Dhirendra Mishra, J

The appellant has preferred this appeal under section 374 (2) of the Code of Criminal Procedure against the judgment dated 21.7.1997 passed by Additional Session Judge, Janjgir in Session Trial No. 55/1995 convicting him under sections 302 and 201 of the Indian Penal Code and sentencing to undergo imprisonment for life and RI for four years respectively on both counts.

2. Case of the prosecution in brief is that deceased Ghasninbai was married to the appellant in the *Chait* month of the year when incident occurred. The appellant brought the deceased in the *Assadh* month of the same year and they lived together in village Darang. On 27.10.1994 the appellant killed the deceased with the help of pick axe and concealed the dead body in a garbage pit situated behind his house. Thereafter, he gave false written report on 9.11.1994 regarding missing of his wife. However, the dead body of the deceased was recovered on 10.11.1994 from a pit and it was identified to be of Ghasninbai. ASI (PW-15) D.R. Yadav recorded Dehati Merg Intimation of Ex. P-20 on 10.11.1994 at 15.20 hours mentioning therein that he reached village Darang in connection with the missing report No. 22/1994 where he met father

of Ghasninbai namely Budhram Kewat and his relatives. On inquiry Budhram Kewat stated that his daughter Ghasninbai was not missing but his son-in-law had killed her and buried the dead body in a garbage pit situated behind his house. Thereupon, pit was opened and mutilated body of Ghasninbai along with clothes was recovered. Identification memo of dead body Ex. P-1 was prepared. Inquest over the dead body was conducted on 10.11.1994 in the presence of witnesses. Site plan of Ex P-5 was prepared by Station House Officer on the same day. Body was sent for post mortem examination vide Ex P-9 on 10.11.1994 to BDM Hospital Champa. Post mortem examination was conducted by Dr. H.S. Chandel PW-5 and Dr. R.K. Chandra PW-6 on the same day. Dr. Chandel recorded that skeletal frame of a young lady in multiple pieces with petticoat and sari was received by him for post mortem. Scalp was peeling from the skull bone. Skeletal frame contained soft tissues with offensive smell. Softening of attached soft tissues was there. Skeletal system consisted of skull. Cervical vertebra, thoracic case, lumbar vertebra with pelvic bone with sacrum and femur, tibia and fibula of both legs were there. Except bones and pieces of flesh the other parts were not available at the time of post mortem examination and therefore, post mortem examination of separate parts of the body could not be recorded. The whole body was at the advance stage of decomposition and in the aforesaid circumstances no definite opinion regarding cause of death could be given. In the cross examination PW-5 Dr. Chandel has stated that though looking to the remains of the body it could be said that they were of human body but length of the body could not be ascertained. He has also stated that there were no genital parts in the dead body nor was there any visra. He further stated that at the advance stage of decomposition all the bones get separated and in the instant case the dead body had crossed that stage also. He further stated that at the time of post mortem examination of the dead body, the parts necessary for establishing the identity of the deceased and cause of death were destroyed and therefore no opinion could be given regarding cause of death of the deceased. Blood stained sari, blood stained ragged bedding (*kathri*), blood stained pieces of curtain, blood stained full pant, green colour shirt, blood stained and plain earth and one pick axe were seized from the

house of the appellant on 11.11.1994 vide seizure memo Ex. P-4. Merg intimation vide Ex. P-15 was prepared on the basis of Dehati merg on 10.11.1994. Thereafter, FIR Ex. P-16 was recorded on 10.11.1994 at 20.35 hours mentioning the offences under sections 302 and 201 of the IPC on the basis of Dehati First Information Report Ex. P-21. Dead body was recovered vide recovery memo Ex. P-19. Site plan of Ex. P-22 was prepared by Halka Patwari PW-3 Ashwani Kumar Sao. Doctor performing autopsy over the dead body of the deceased had referred it to the Chief Medical Officer, Bilaspur for opinion who in turn referred the same to Forensic Medicine Department of Medical College, Raipur for opinion whereupon Dr. D.C. Jain, Head of the Department of Forensic Medicine, Medical College Raipur gave his opinion vide Ex. P-23 and opined that cause of death is injury to chest leading to haemorrhage and shock, syncope and death. Injury was sufficient to cause death in ordinary course of nature and it was caused by hard and blunt object and it was homicidal in nature. Duration of death was opined as 2-3 weeks from the date of examination. On the basis of memorandum of the appellant Ex. P-6 weapon of offence i.e. pick axe was taken into possession on 19.11.1994 vide Ex. P-7 and thereafter the appellant was arrested on that very day vide Ex. P-8.

3. After completing investigation police filed charge sheet in the court of Judicial Magistrate First Class Janjgir under sections 302 and 201 of the IPC who in turn committed the case to the court of Session Judge Bilaspur from where learned Additional Session Judge, Janjgir received the case on transfer for trial.

4. Learned trial Court framed charges under sections 302 and 201 of the IPC against the appellant.

5. Prosecution in order to establish the charge examined as many as 18 witnesses. Thereafter statement of the accused was also recorded under section 313 of the Code of Criminal Procedure in which the appellant denied the circumstances appearing against him and pleaded innocence and false implication in the case. However, learned trial Court after hearing counsel for

the accused as also counsel for the State convicted and sentenced the appellant as mentioned above.

6. Learned counsel for the appellant submits that there is no eyewitness to the incident. Even the identity of the dead body and cause of death has not been established beyond reasonable doubt. According to the counsel for the appellant the trial Court has convicted the appellant relying upon the inadmissible evidence. It is argued that from perusal of the post mortem report it is clear that all the parts of the body necessary for establishing identity of the deceased and cause of death were destroyed and only skeletal remains were recovered by the police, even then relying upon the statement of PW-8 Budhram, father of the deceased, PW-9 Kartikram, PW-11 Ramcharan and PW-12 Bhajoram Yadav, the court below has held that the dead body was of deceased Ghasninbai, wife of the appellant. It is further argued that the body of the deceased was recovered by the police on the basis of information given by Budhram, father of the deceased and others from an open place which was accessible to one and all but even then the trial Court has convicted the appellant on the basis of circumstance that body was found from the house of the appellant. It is further argued that from the material available on record it is established that the appellant and the deceased had cordial relations and therefore, there was no motive to the appellant to kill his own wife and further that the prosecution has not been able to establish the motive attributable to the appellant for committing murder of his wife and thus in the absence of motive particularly in the case where conviction is based on circumstantial evidence, the appellant could not have been convicted.

7. On the other hand learned counsel for the respondent has supported the impugned judgment of the trial Court.

8. We have heard learned counsel for the parties and perused the material available on record.

9. Learned counsel for the appellant has seriously disputed the identity of the deceased and stated that cause of death of the deceased has also not been established. In order to establish identity of the deceased Court below has relied upon the statement of PW-1 Firturam who has stated that body of the deceased was taken out from a garbage pit and it was identified by him as that of Ghasninbai, wife of the appellant vide Ex.P-1. This witness in the cross examination has stated that body which was in pieces was wrapped in two bundles. Petticoat, sari and ragged bedding (*kathri*) were also there. In one bundle head of the deceased and her clothing were there and the other pieces of the body were in the other bundle. This witness has denied the suggestion that he identified the deceased from hair and bangles. He rather stated that he identified the body from her head. However, Ex.P-1 mentions that body was identified on the basis of hair and bangles. PW-8 Budhram has stated that he identified the body of his daughter in the presence of witness Sukhiram. He has admitted that body was decomposed and foul smell was emanating from it. He also admitted that he could not identify the bangles over the body. PW-10 Ramlal has admitted that after seeing the dead body he could not identify it as that of Ghasninbai. However, he stated that her father and uncle identified the body to be of Ghasninbai. He further stated that body was beyond recognition and therefore, he could not identify. He stated that the face was also beyond recognition. PW-5 Dr. Chandel who conducted the post mortem has also stated that portion of the body necessary for identification were found destroyed.

Thus, if we screen the evidence available on record regarding identification of Ghasninbai, we are of the considered opinion that looking to the advance stage of decomposition and that the body was found in pieces and the evidence of Dr. Chandel (PW-5) as also independent witness Ramlal (PW-10), it would not be safe to draw a conclusion that the body in question was of Ghasninbai.

10. So far as the cause of death is concerned, both the doctors conducting autopsy have categorically stated that body referred to them was received in pieces and it was at the advance stage of decomposition and in such condition

the bones get separated and in the instant case the body had crossed that stage also and therefore, according to them no definite opinion regarding cause of the death of the deceased could be given. However, the Court below on the basis of document of Ex.P-23 which has been exhibited by the Court and which has not been proved by the author, in paragraph 6 has held that as per the report of the Professor of Head of the Department of Forensic Medicine, Raipur judicial notice of which was taken under section 293 of the Cr.P.C. which mentions that fourth, fifth and sixth ribs were found fractured, skeleton of bones pertains to 18-20 year lady and the cause of death is injury over chest which was sufficient to cause death in the ordinary course of nature, death of deceased Ghasninbai was homicidal in nature.

11. It is not in dispute that report of Ex.P-23 has not been admitted by the appellant and nor the same has been proved by its author Dr. D.C. Jain and as such appellant had no opportunity to cross examine Dr. D.C.Jain. Section 293 (1) of the Cr.P.C. permits certain document purporting to be a report under a hand of a Government scientific expert may be used as evidence in the inquiry, trial or other proceedings under this Code. Government scientific expert to which section applies has been enumerated in sub-section 4 of section 293. Report is admittedly given by Professor & Head of Department of Forensic Medicine, Pt. J.N.M. Medical College, Raipur and Government scientific expert specified in sub-section 4 of section 293 does not include the author of document of Ex.P-23. Therefore, in our considered opinion the Court below was not justified in taking judicial notice of document of Ex.P-23 without the same being proved by examining its author. In the aforesaid circumstances there is no evidence on record that the lady whose body was recovered from a garbage pit died homicidal death.

12. So far as other circumstances are concerned, the Court below has relied upon the evidence of Budhram (PW-8) who has stated that after marriage his daughter and the appellant both had come to his house and stayed there for 7-8 days and returned back. They again came to his house during Dashhara and at that time he saw some black spot over the face of Ghasninbai and he advised

Lalaram to come again and take medicine but he did not come. In the month of Kartik during harvesting season Lalaram came alone and on inquiry about Ghasninbai he said that she was all right. He was putting on Mangalsutra of Ghasninbai. He told him that father-in-law of Ghasninbai had called him and thereafter on the very next day he went to village – Darang alone. On reaching Darang his sister Titarbai told him weeping that Ghasninbai was not there, she was missing for 3-4 days. Thereafter this witness went to Lalaram's house and Lalaram told him that Ghasninbai had gone to the house of her maternal uncle at village – Sarhar, whereupon he went to Sarhar and inquired from her maternal uncle about Ghasninbai who told him that Ghasninbai had not come there. When on search Ghasninbai could not be located by them, they went to Police Station – Champa with Sarpanch and lodged missing report of Ghasninbai. After lodging the report they returned to village – Darang. Accused Lalaram and his father on seeing them fled away from the village, upon which they got suspicious. Police personnel asked them to search if they were suspicious, upon which they searched the house of Lalaram and found blood like stains over the walls and on search of kitchen garden they recovered the dead body from a garbage pit tied in a cloth. Thereafter, the body was taken out with the help of Ramlal and Gendram. Similar is the statement of PW-10 Ramlal who is also resident of village – Kamrid. He has stated that they were searching Ghasninbai and when they reached village – Darang along with 20-25 people they found that Lalaram and his father were trying to flee, whereupon they caught hold of Lalaram and at the same time police personnel also reached there and on search in the vicinity they found that Lalaram had dug a pit equal to the height of a man near the wall of his house. However, they could not recover anything from the wall. They dug the garbage pit and recovered the body. In the cross examination this witness has stated that he did not see Lalaram running nor he absconded after seeing him. PW-11 Ramcharan has stated in his evidence that Ghasninbai was his niece, Lalaram came to him 2-3 days back and inquired about Ghasninbai and on his denial he said that she might have gone to village – Kamrid. Thereafter they also proceeded for Kamrid. He has further stated that on the third day father of

Lalaram came to him and alleged that he (Ramcharan) had concealed Ghasninbai. Thereafter he also started searching Ghasninbai. He has further stated that the day when the body was recovered from the pit he had gone to Darang. In the cross examination this witness has stated that Lalaram and deceased Ghasninbai had very good relationship and his brother-in-law or anybody else in village – Kamrid never told regarding any dispute between the two.

13. The Court below has heavily relied upon the evidence of PW-13 Ku. Lalitabai and PW-14 Kanchanbai to arrive at the conclusion that Lalitabai saw the appellant digging the garbage pit. Kanchanbai who is neighbour of the appellant has stated that kitchen garden of Lalaram and her own kitchen garden are adjacent and she used to talk to the wife of Lalaram (deceased) from her Baadi and she had given her vegetable on that day. However, on the next day when she did not meet Ghasninbai she inquired from Lalaram about her, to which he replied that she had gone to some village and 4-5 days thereafter she saw Lalaram digging his garbage pit with spade. At that time she also saw Rajni and Lalita were swinging near the garbage pit. After 4-5 days of this incident she felt that some foul smell was emanating, she asked Lalaram about the said foul smell, to which reply was given that smell is of dead snake.

14. On close scrutiny of the evidence of Lalita we find that she has stated that Lalaram was not digging garbage pit but was digging some other pit. From the evidence of PW-14 Kanchanbai it cannot be said that the pit was not accessible to others and it was accessible only to the appellant. On the other hand Kanchanbai has stated in paragraph 8 of her evidence that if anybody had to reach the Baadi of the accused then he had to come through the lane. There is a small wall between field of Daduraiya and the garbage pit and height of the wall is just 1 or 1 ½ ft., therefore, it cannot be said that the place was not accessible to others. However, the court below on the basis of circumstance that the appellant gave missing report in police station and the body was recovered from his house and PW-13 and PW-14 saw the appellant digging the pit, has considered the above circumstance sufficient to arrive at the conclusion

that the appellant alone committed the murder of the deceased and concealed the dead body in his garbage pit and accordingly convicted him under sections 302 and 201 of the IPC.

15. In order to rest the conviction based on the circumstantial evidence it is the duty of the Court to ascertain whether based on the following principle, the prosecution has been able to connect the accused/appellant with the crime:

1) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

2) those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused;

3) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

4) the circumstantial evidence in order to sustain the conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

16. If we test the instant case in the light of the above principle, we are of the opinion that the circumstances established by the prosecution are not of such a clinching nature on the basis of which it can be inferred conclusively that the appellant committed the murder of his wife and concealed the dead body in a pit because (i) the prosecution has failed to prove motive for the crime; (ii) dead body of the deceased was not recovered at the instance of the appellant; (iii) case of the prosecution is that missing report was lodged by the appellant on 9.11.1994 whereas said report has not been proved, on the contrary the

witnesses have stated that PW-8 Budhram went to lodge the missing report a day earlier to the incident, however, report lodged by the father of the deceased has also not been filed and proved, (iv) there is discrepancy in the statement of PW-8 and PW-10 regarding the place where the pit was dug and (v) that as already held the identity of the body to be of Ghasninbai is doubtful and even the prosecution has not been able to establish the cause of the death of the deceased. Thus the prosecution has not been able to establish the charges against the appellant beyond all reasonable doubt and the appellant is entitled for benefit of doubt.

17. Accordingly, we are of the considered opinion that the trial Court was not justified in convicting the appellant for the offences under sections 302 and 201 of the IPC and sentencing to undergo imprisonment for life and R.I. for four years respectively on both counts, by the impugned judgment.

18. In the result, the appeal succeeds and the impugned judgment of conviction and sentence passed by the trial Court is set aside. Appellant is acquitted of all the charges leveled against him and he is directed to be set at liberty forthwith if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge